

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

RLI INSURANCE COMPANY

Plaintiff,

vs.

INDIAN RIVER SCHOOL DISTRICT,
EDIS COMPANY AND BECKER MORGAN
GROUP, INC.

Defendants.

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Civil Action No.: 05-858-JJF

**DEFENDANT EDIS COMPANY'S ANSWERING BRIEF IN OPPOSITION TO
PLAINTIFF'S MOTION TO COMPEL**

COMES NOW Defendant EDiS Company, by and through its undersigned counsel, and opposes *Plaintiff's Motion to Compel*, and in support thereof offers the following, to wit:

1. Plaintiff, on behalf of all parties, filed a proposed Rule 16 Scheduling Order on July 10, 2006. D.I. 24. The proposed Scheduling Order was prefaced with the statement: "The parties having satisfied their obligations under Fed.R.Civ.P.26(f):..." The Court approved and entered the proposed Scheduling Order on July 13, 2006. D.I. 25. The Scheduling Order provided a written discovery cut-off deadline of October 31, 2006.

2. By Stipulation filed on October 31, 2006, the parties jointly requested an extension to the written discovery deadline until December 31, 2006. D.I. 36. The Court granted the request for the extension on November 2, 2006.

3. By second Stipulation filed on April 27, 2007, the parties jointly requested an extension to the deadline for completing factual depositions, expert reports and dispositive motions, but did not request an extension to conduct additional written discovery. D.I. 83. The Court granted the requested extension on May 8, 2007.

3. Plaintiff filed its *Motion to Compel* on August 3, 2007. D.I. 84.

4. Within the *Motion to Compel*, Plaintiff requests an extension to the discovery deadline. Plaintiff's request violates D.Del.LR. 16.5 because it was not made prior to the expiration of the deadline, in fact, the request was made over eight months after the extended deadline expired.¹ Further, Plaintiff failed to set forth a reason for the request, other than that Plaintiff wishes to conduct additional discovery, which is insufficient.

5. Plaintiff also seeks an order from the Court compelling the parties to comply with Delaware's Default Standard for Discovery of Electronic Documents (the "Standard"). The Standard "is available for use by the Court and by the parties engaged in litigation in the District of Delaware." If it is utilized, the Standard requires that the parties exchange the information that Plaintiff now seeks **before** the Fed.R.Civ.P. 16 scheduling conference.

6. Similarly, Fed. R.Civ.P 26(f)(3) requires that the parties meet and confer regarding electronic discovery. Plaintiff, in filing the first proposed Scheduling Order on behalf of all parties, represented that the parties had complied with Fed. R.Civ.P 26(f).

7. Plaintiff's request for an order compelling electronic discovery was filed over one year after Plaintiff represented that the Fed.R.Civ.P 26(f) had been satisfied and over eight months after the extended discovery deadline expired.

8. Defendant EDiS produced over forty boxes of documents during the discovery period, including hard copies of emails, and is supplementing its production with an additional three boxes of documents responsive to Plaintiff's timely filed Request for Production.

¹Plaintiff also failed to comply with the Court's Order and Local Rules concerning motions pursuant to discovery disputes. See July 13, 2006 Scheduling Order, Para. 4, D.I. 25 and D.Del.LR 37.1.

9. RLI failed to produce electronic discovery or otherwise comply with the Standard governing electronic discovery.

10. Plaintiff failed to address electronic discovery during the extended discovery period, failed to produce electronic discovery itself, failed to comply with the Court's rules governing the relief it seeks and therefore Plaintiff's *Motion* should be denied.

WHEREFORE, Defendant EDiS Company respectfully requests that the Court deny Plaintiff's Motion to Compel.

LOGAN & ASSOCIATES, LLC

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